IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 26.09.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Habeas Corpus Petition No.767 of 2006

Shanmugam @ Sathya ... Petitioner

vs.

1. The Secretary to Government of Tamil Nadu,
Prohibition & Excise Department,
Fort St. George, Chennai-600 009.

2. The District Magistrate
and District Collector,
Kancheepuram District,
Kancheepuram. ... Respondents

For Petitioner : Mr.N.Sudharsan
For Respondents : Mr.M.Babu Muthu Meeran,
Additional Public Prosecutor.

Petition under Article 226 of the Constitution of India for the issuance of writ of habeas corpus to call for the records of the detention order made in BDGISV 27/2006 dated 13.7.2006 passed by the District Magistrate and District Collector, Kancheepuram District, Kancheepuram the second respondent herein and set aside the same and direct the respondents to produce the detenue before the Court and set the detenue Tmt.Sundari W/o Krishnan, F/A 39, now confined at Central Special Prison for women at Vellore at liberty.

O R D E R

(Order of the Court was made by P.SATHASIVAM, J.)

The petitioner, who is the son of the detenue by name Sundari, who is detained as a "'Bootlegger " as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated 13.07.2006, challenges the same in this petition.

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2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel for the petitioner by drawing our attention to several infirmities in the translation submitted that the detention order is liable to be quashed on the ground of non-application of mind on the part of the detaining authority. Though the learned counsel for the petitioner highlighted several instances, we intend to refer only two instances.

4. In the English version of the history of the case, which is available at page No.58, the Inspector of Police/sponsoring authority has stated "Mixed with some poisonous substances. The accused was arrested and the contraband seized under cover of mahazar...". While translating the same in Tamil which is available at page No.59, there is no reference to the arrest of the accused. Likewise, in the English version, the Inspector of Police has merely stated samples were taken in bottles from the seized contraband, whereas while translating the same in Tamil it is specifically stated "...பிளாஸ்டிக் கேன்களிலிருந்து தலா 500 மிலி வீதம் ஒவ்வொரு கேனிலிருந்து தலா இரண்டு வீதம் மொத்தம் 6 பாட்டில்களில் மாதிரிக்கு எடுத்து .." . The number of bottles namely six is not available in the English version of the history of the case.

5. Regarding the report of the Forensic lab, the learned counsel for the petitioner has brought to our notice that in the document which is available at page No.66, the Inspector of Police has stated that he received the report from the Forensic lab in Reference No.1479 dated 11.07.2006. However, in the certificate issued by Dr.Parasakthi, which is available at page No.67 in Reference No.2, it is stated that the said certificate is dated 07.07.2006 and not 11.07.2006 as stated by the Inspector of Police.

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6. We are satisfied that in the absence of proper explanation by the person concerned, we hold that the variations and discrepancies go to the root of the matter and on this ground, the detention order is liable to be quashed.

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7. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in connection with some other case or cause.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Gms

To

1. The Secretary to Government of Tamil Nadu,
   Prohibition & Excise Department,
   Fort St. George, Chennai-600 009.

2. The District Magistrate and District Collector,
   Kancheepuram District,
   Kancheepuram.

3. The Superintendent,
   Central Special Prison for women,
   Vellore
   (In duplicate for communication to detenu)

4. The Joint Secretary to Government,
   Public (Law and Order),
   Fort St. George, Chennai-9.

5. The Public Prosecutor,
   High Court, Madras.

1 cc To Mr.N.Sudharsan, Advocate, SR.45703.

HCP. No.No.767 of 2006

MKJ(CO)
RVL 25.10.2006

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